



Heat Stress Prevention

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Manesh Rath



Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been quoted or interviewed in *The Wall Street Journal*, *Bloomberg*, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," and C-SPAN.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America 2016, 2017 and 2018; selected by Super Lawyers 2016 – 2017, 2017 – 2018; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



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Taylor Johnson



Taylor Johnson is an environmental lawyer specializing in the area of environmental regulation of products, including chemical control, pesticides, energy efficiency regulation, and importantly, domestic and international transportation of hazardous materials. Mr. Johnson also advises clients on community-right-to-know laws, Proposition 65, occupational safety and health matters, and supports a wide variety of commercial tort and other litigation issues.

Mr. Johnson has special expertise in the area of hazardous materials transport, including enforcement defense and compliance counseling. Mr. Johnson helps companies secure competent authority approvals, special permits, and letters of interpretation from regulatory authorities around the world. He has also prepared successful petitions to PHMSA on behalf of shippers seeking regulatory relief.

Prior to joining Keller and Heckman, Mr. Johnson promoted the development of energy and environmental legislation and policy at the state level.



Topics to be Discussed:

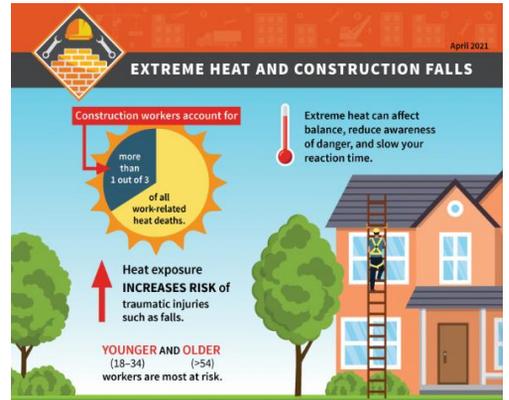


- ◆ NIOSH Recommendations
- ◆ California Heat Illness Standard
- ◆ National Emphasis Program
- ◆ OSHA General Duty Clause
- ◆ OSHA Rulemaking Process

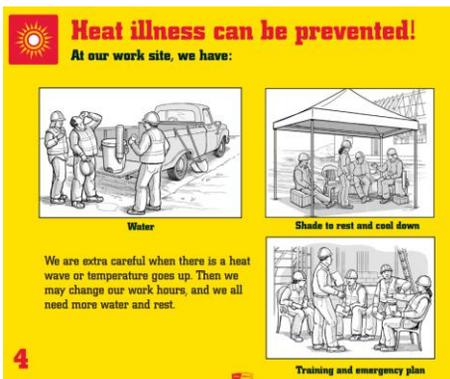
NIOSH Recommendations



- ◆ Issued Criteria for a Recommended Standard Occupational Exposure to Heat and Hot Environments in 2016
- ◆ Engineering controls: heat-absorbing shielding
- ◆ Training: Toolbox Talks
- ◆ Acclimatization: gradual increase in exposure to hot conditions over 7 to 14 days
- ◆ Hydration: 1 cup of water every 15-20 minutes
- ◆ Rest Breaks: increase frequency as temperature and humidity rise



California Heat Illness Standard



- ◆ Only applies to outdoor worksites
- ◆ Requires employers in the construction industry to do the following:
 - ◆ Observation/monitoring
 - ◆ Emergency response procedures
 - ◆ Acclimatization
 - ◆ Training
 - ◆ Written heat illness prevention plan
- ◆ When temps reach 80 degrees, mandatory access to shade
- ◆ When temps reach 95 degrees, high heat procedures must be utilized

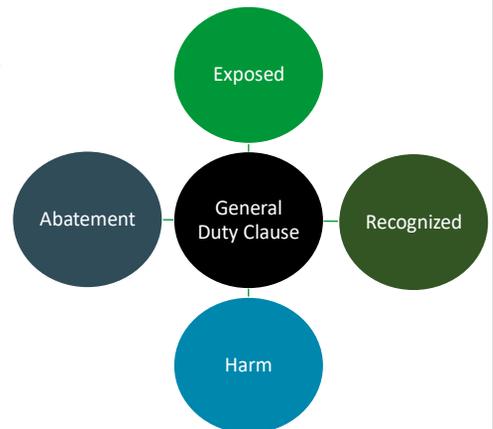
National Emphasis Program- April 8, 2022



- ◆ Targets over 70 high risk industries, including construction
- ◆ CSHOs will inquire about protocols for heat priority days
 - ◆ Heat priority days are when the heat index is expected to be 80° or higher
- ◆ OSHA will conduct preplanned inspections of high-risk industries
 - ◆ When National Weather Service has announced a heat warning or advisory for the local area
- ◆ OSHA will inspect alleged heat-related incidents regardless of industry’s risk level

OSHA General Duty Clause

- ◆ OSHA historically has cited employers for heat stress related incidents under the General Duty Clause
- ◆ OSHA always has the burden of proof
- ◆ *Secretary v. A.H. Sturgill Roofing, Inc. (Sturgill)*
 - ◆ New temporary employee collapsed at job site; died 3 weeks later from heat stroke complications
 - ◆ OSHA Issued 2 citations, one under the GDC, one under Construction Standard “safety and training provision”
 - ◆ ALJ affirmed; RC reversed



OSHA Rulemaking Process



- ◆ Goal is to develop a specific standard for heat-related injury and illness prevention
- ◆ Stakeholder Meeting on OSHA Initiatives to Protect Workers from Heat-Related Hazards (May 3)
- ◆ Agency stated no decisions made on content or timing for proposed rule
- ◆ Heat Injury and Illness Prevention Work Group of the National Advisory Committee on Occupational Safety and Health (NACOSH)
- ◆ Difficulty in setting a standard here is the various factors at play in determining the proper course of heat illness prevention



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What Employers Should Do



- ◆ Construction is targeted industry of NEP- prepare for inspections when 80° or higher
- ◆ Have written procedures and protocols for heat priority days
- ◆ Toolbox Talks
- ◆ Monitor release of proposed OSHA rule
- ◆ Submit comments

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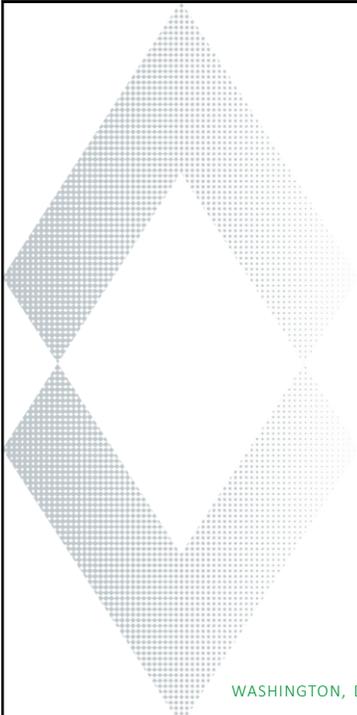
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